

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 22, 2007

STATE OF TENNESSEE v. DENNIS BRIAN DAVIS

Appeal from the Criminal Court for Cumberland County

No. 8389 Lillie Ann Sells, Judge

No. E2005-02505-CCA-R3-CD - Filed June 7, 2007

The defendant, Dennis Brian Davis, appeals his Cumberland County Criminal Court jury conviction of manufacturing methamphetamine, a schedule II controlled substance, within 1,000 feet of a school. *See* T.C.A. §§ 39-17-417(a)(1), (c)(2),- 432 (2006). In his timely appeal, he claims that the evidence was legally insufficient to support the verdict. We disagree and affirm the criminal court's judgment.

Tenn. R. App. P. 3; Judgment of the Criminal Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and ALAN E. GLENN, JJ., joined.

Anthony W. Turner, Crossville, Tennessee, for the Appellant, Dennis Brian Davis.

Robert E. Cooper, Jr., Attorney General & Reporter; Cameron L. Hyder, Assistant Attorney General; William Edward Gibson, District Attorney General; and Gary McKenzie, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The evidence introduced at trial showed that at approximately 2:00 a.m. on May 20, 2004, Crossville police officers approached a house at 200 Justice Street that they suspected harbored a "wanted person" and a methamphetamine manufacturing operation (MMO). Implementing a tactical approach to the house, two officers hid themselves in the back yard until other officers drove up the driveway to the front of the house. The secluded officers saw a "watchman," Danny Reed, walking around the outside of the house. When the police car pulled up the driveway, Reed ran to an open kitchen window on the back of the house, yelling, "[C]ops, cops, cops." The two secluded officers "tackle[d] the individual and ma[d]e him quiet."

As the officers heard another officer knock on the front door, one of them looked in the kitchen window and saw the defendant standing in the kitchen with Robert Reynolds, the man

who was “wanted” by the police. Reynolds held a Mason jar that contained “separating liquids.” He was facing the stove, on which one of the eyes was “red” hot. The defendant was dipping “what appeared to be a pH test strip” into the jar.

The officer who observed the men testified that based upon his training in MMO investigations and his experience in conducting approximately 15 such investigations, the basic “meth oil” must meet certain standards of alkalinity.

The officer testified that the house belonged to Kenneth Bond, who had answered the knock at the front door and was conversing with the officer who had knocked. Having seen Mr. Reynolds and a possible MMO in the kitchen, the officers from the rear position hurriedly entered the house through the front door and went to the kitchen with guns drawn. Reynolds fled into a laundry room and attempted to hide behind a washing machine, and the defendant, who was standing in the kitchen holding a Mason jar containing separating liquids, complied with the officers’ commands to set the jar down and lie on the floor. The officers subdued Reynolds and the defendant, removed them, Bond, and a female from the house and called a team of officers who were certified in dismantling MMOs. The officer secured the perimeter of the house until the dismantling team arrived.

Crossville Officer Kenneth Cherry testified that he was qualified and certified to “clean up” MMOs and to garner evidence from such sites. Officer Cherry testified that he was one of the officers who had approached the Bond house from the rear, assisted in subduing Reed, and observed the defendant dipping a test strip into a Mason jar. Officer Cherry testified that through the kitchen window he detected a “strong odor of what we believed to be methamphetamine about the residence.”

After the occupants of the house were removed, Officer Cherry and Lieutenant Becky Seiber Wright, who was also certified to dismantle MMOs, began “processing” the site. They gathered evidence, took measurements, and made photographs. Officer Cherry identified photographs of objects found either on the kitchen counter or the stove of the Bond house, including a pH-level test kit and pH test strips. Liquids recovered from the kitchen were sent to the Tennessee Bureau of Investigation (TBI) for analysis.

Lieutenant Becky Seiber Wright testified that she was trained and certified to dismantle MMOs. She described the typical method of Cumberland County methamphetamine manufacturing as “tablet extraction,” which involves combining ephedrine or pseudoephedrine from certain cold medicines or diet pills, red phosphorous from matchbook striker plates or roadway flares, and iodine. The ephedrine or pseudoephedrine must be soaked in a solvent such as Coleman fuel or a product called “Heet,” which is used to extract water from gasoline tanks. The red phosphorous is rendered by soaking matchbook striker plates in Heet or Coleman fuel. Iodine is usually crystallized by combining it with hydrogen peroxide. Coffee filters are often used to filter extraneous elements from the chemicals, such as the “binder” materials from the ephedrine tablets. Straining the red phosphorus material through a coffee filter purifies the product and leaves a maroon

clay-type refuse in the filter. When mixed together, the basic three components react chemically; later, water is added, and the mixture is heated on a stove. After cooking and cooling the compound, the manufacturer adds a solvent to separate the compound into “bi-layered materials . . . where it looks like a water substance on top, or an oily colored substance on the bottom.” Turkey basters are often used to remove one layer from the other. Then, the manufacturer, striving for a pH balance of “around 7.2 to 8,” adds materials such as muriatic acid or “Red Devil” lye to alter the pH balance.¹ Typically, the material is heated to ultimately render a powder that can be ingested. The various steps in one process of manufacturing methamphetamine can occur at different locations.

Lieutenant Seiber Wright testified that she was called to the Bond house on May 20, 2004. She identified a photograph of a bi-layered liquid – dark on the bottom, lighter colored on top – that she recovered from the kitchen. She found a turkey baster in the kitchen that could be used to pull one layer from the other. She identified photographs of a stove eye and a pH-balance test kit. She testified that she recovered a flask used for combining the ephedrine, red phosphorous, and iodine and that a tube leading from the flask’s stopper bore stains indicating the presence of red phosphorous and iodine. The flask itself contained residue of red phosphorous. She recovered Red Devil lye, Mason jars containing liquid, and coffee filters from the kitchen, as well. She opined that a MMO was underway in the kitchen, “to the point where all was left was for it to be extracted and heated to make the powder form.”

The State then presented a TBI forensic scientist who testified that four of the six samples submitted by Lieutenant Seiber Wright contained methamphetamine. The substances were typical of liquids he had tested in several hundred methamphetamine discoveries.

Crossville Police Department Detective Greg Patton testified that the Bond house at 200 Justice Street was located “well within a thousand feet from” Glenn Martin Elementary School.

Priscilla Joyce Davis, the defendant’s mother, testified in his behalf that the defendant lived with her in May 2004. She lived on Creston Road previously and moved to an address on Stone Loop sometime around May 20, 2004. On the evening of May 20, the defendant accompanied her to a farewell party for a friend of hers, and they had returned home, when at about 10:30 p.m., some girls picked up the defendant and took him to “town.” Ms. Davis next heard from the defendant the following morning when he called for help in getting released from jail.

Based upon the evidence described above, the jury convicted the defendant of manufacturing methamphetamine within 1,000 feet of a school, a Class B felony. The trial court ultimately sentenced the defendant to a term of ten years in the Department of Correction.

Now on appeal, the defendant challenges only the legal sufficiency of the convicting evidence. In his brief, the defendant claims that no evidence was presented to the trial court that showed that he “was engaged in any portion of the manufacturing of methamphetamine process with

¹ Lye is “any strongly alkaline substance.” Webster’s New World Dictionary 845 (2d College Ed. 1986).

the exception of a 30 second observation through an open window.” Because we hold that the evidence is sufficient to support the defendant’s conviction, we affirm the judgment of the trial court.

The standard for an appellate court when reviewing a challenge to the sufficiency of the evidence is “whether, considering the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002); *see also* Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2791-92 (1979); *State v. Hall*, 8 S.W.3d 593, 599 (Tenn. 1999). Because a verdict of guilt removes the presumption of innocence and imposes a presumption of guilt, the burden shifts to the defendant upon conviction to show why the evidence is insufficient to support the verdict. *See State v. Evans*, 108 S.W.3d 231, 237 (Tenn. 2003); *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). On appeal, the State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom. *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000); *see also Carruthers*, 35 S.W.3d at 558; *Hall*, 8 S.W.3d at 599.

A verdict of guilt by the trier of fact resolves all conflicts in the evidence in favor of the prosecution’s theory. *See State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). “Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court does not re-weigh or re-evaluate the evidence.” *Evans*, 108 S.W.3d at 236 (citing *Bland*, 958 S.W.2d at 659). Nor may this court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. *Id.* at 236-37. The supreme court articulated the rationale for this rule as follows:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing *Carroll v. State*, 212 Tenn. 464, 370 S.W.2d 523 (1963)).

“It is an offense for a defendant to knowingly . . . [m]anufacture a controlled substance” T.C.A. § 39-17-417(a)(1) (2006). Manufacturing a “Schedule II controlled substance, including cocaine or methamphetamine in an amount of less than point five (.5) grams, is a Class C felony” *Id.* § 39-17-417(c)(2)(A). Additionally, a “violation of [section] 39-17-417 . . . that occurs on the grounds or facilities of any school or within one thousand feet (1,000') of the real property that comprises a public or private elementary school, middle school, secondary school, preschool, child care agency, or public library, recreational center or park shall

be punished one (1) classification higher than is provided in [section] 39-17-417(b)-(i) for such violation.” *Id.* § 39-17-432(b)(1).

Viewing the evidence in the light most favorable to the State and indulging the State the benefit of all reasonable inferences, the evidence showed that an MMO was underway in the small kitchen of the house at 200 Justice Street in the wee hours of the morning on May 20, 2004. The defendant and Reynolds were in the kitchen, where a stove eye was glowing red. The men had a Mason jar containing a bi-layered liquid suggestive of a compound rendered in the methamphetamine manufacturing process, and the defendant held a pH test strip in the liquid. Achieving a proper pH balance of the liquid methamphetamine is essential to obtaining a consumable product. The defendant held the Mason jar containing the liquid when the officers entered the kitchen. An odor typical of an MMO permeated the residence. A pH test kit was located on the stove on the kitchen counter, and the police found in the kitchen other equipment and materials commonly used in manufacturing methamphetamine. Most importantly, chemical analysis showed that liquid materials found in the kitchen were, or contained, methamphetamine. The State showed that the MMO in question was located within 1,000 feet of an elementary school.

Under these circumstances, the evidence sufficiently established the elements – and the defendant’s guilt – of the charged offense. The judgment of the criminal court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE